

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE M. FIELDS and HEALTH & HUMAN SERVICES,
NATIONAL INSTITUTES OF HEALTH, Phoenix, Ariz.

*Docket No. 95-2653; Submitted on the Record;
Issued January 5, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective September 19, 1993.

On January 4, 1991 appellant, then a 51-year-old biologist, filed an occupational disease claim, alleging that she sustained severe headaches, hoarseness, difficulty breathing, nausea, vomiting and sore throats due to exposure to acetonitrile which she first became aware of and realized was work related on August 7, 1990. Appellant continued working until September 1991 when she stopped due to "severe signs of sensitivity and allergic reactions." On July 23, 1991 the Office accepted appellant claim for "toxic effect, volatile chemicals." On June 15, 1993 the Office proposed termination of compensation on the grounds that appellant had no continuing disability as a result of her injury of August 7, 1990.

By decision dated September 7, 1993, the Office terminated appellant's compensation effective September 19, 1993 on the grounds that any disability due to her employment injury ceased no later than September 19, 1993, relying on the report of Dr. Phillip Harber, who is Board-certified in internal and preventive medicine. In a decision dated July 27, 1994 and finalized on July 28, 1994, an Office hearing representative affirmed the Office's September 7, 1993 decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation effective September 19, 1993.¹

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on July 31, 1995, the only decision before the Board is the Office's July 28, 1994 decision. See 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁵ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after September 19, 1993, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, the Office proposed termination of appellant's compensation based on the report of Dr. Harber, who stated that appellant's exposure to solvents did not leave any permanent effects and she was capable of returning to her date-of-injury job. The Office provided appellant with ample time to respond to its proposal of termination, including an extension of time for her to be examined by physicians at the National Jewish Center (NJC) as she requested. However, the NJC responded to her request by indicating that they did not review the files of patients unless they are undergoing direct evaluation in their center.⁷ Appellant resubmitted medical and factual information already contained in the file on two separate occasions when endeavoring to respond to the Office's proposal of termination of her compensation. While she continued to assert that she had residual allergic reactions due to her exposure to chemicals while working in the employing establishment, this assertion is not consistent with the findings of her treating physician, Dr. Margaret C. McKee, a Board-certified internist. In a report dated July 13, 1993, Dr. McKee reviewed the conclusions of Dr. Harber and concurred with his assessment that appellant had no residuals of her chemical exposure in the workplace. Dr. McKee said, "I spent the bulk of the visit explaining to patient what [Dr. Harber's] his findings are, what they mean and the fact that she has had no permanent damage to the body whatsoever by the prior exposure which is certainly over.... I went over this point [that appellant had a conditioned response to the presence of chemicals rather than an actual current reaction stemming from her prior exposure] quite frequently with the patient trying to get her to understand that she need not be fearful around chemicals as they cannot really physically harm

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011 (1992).

⁴ *Carl D. Johnson*, 46 ECAB ____ (Docket No. 94-404, issued May 31, 1995).

⁵ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁶ *Mary Lou Barragy*, 46 ECAB ____ (Docket No. 93-2326, issued May 25, 1995).

⁷ Appellant was scheduled for a complete allergy workup and examination, but canceled these procedures in January 1993.

her although they might bring on symptoms that she finds somewhat unpleasant....” Thus, appellant’s doctor agreed with Dr. Harber, the second opinion physician, that appellant did not have any permanent effects of her prior work exposure to toxic substances and that her current reactions to any and all chemical fumes, smells, etc., was a conditioned response rather than an aggravation of her accepted employment injury.

Appellant urged in response to the proposal of termination that Dr. Harber’s opinion, that she did not have any continuing physical effects from her exposure to chemicals in the workplace, was invalidated by a report dated August 10, 1993 in which the physician found “pinpoint septal erosion.” This report is of limited value and this assertion is not supported by the totality of evidence in the record as the physician’s conclusion is not corroborated by any other evidence of record nor is the conclusion fully explained. Appellant also submitted a report dated November 22, 1993, by Dr. Joseph Hemer, an osteopath, who found that there was a “reasonable possibility” that the chemicals she worked with “may be related” to the mucosal damage of her septum. At the hearing, the Office hearing representative properly indicated that this report was deficient as it did not demonstrate that appellant’s exposure to chemicals at the employing establishment affected her to the point that she was currently totally disabled or in need of medical care. The record was left open for 30 days to allow appropriate evidence to be submitted. However, appellant’s counsel advised that he was unable to obtain such evidence. Since this report does not address the central issue of this case and, with respect to the issue of causal relationship, is speculative and does not provide the basis for Dr. Hemer’s conclusions nor include a complete and accurate history of appellant’s employment injury, *i.e.*, the type of solvents or chemicals to which appellant was exposed and their physical effects, it is not sufficient to overcome the well-rationalized and thorough report of Dr. Harber.⁸

Consequently, the Office properly found that the weight of the evidence rested with the report by Dr. Harber, with which appellant’s treating physician concurred. The Office has met its burden of proof in terminating appellant’s compensation effective September 19, 1993 on the grounds that she has no residual disability from her accepted employment injury.

⁸ Charles A. Massenzo, 30 ECAB 844 (1978).

The decision of the Office of Workers' Compensation Programs dated July 27, 1994 and finalized on July 28, 1994, is hereby affirmed.

Dated, Washington, D.C.
January 5, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member